THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.18403 of 2004

Dated 7th December 2006

Between:

Y. Ganeswara Rao,
Lakshmivarapu Peta,
Rajahmundry, E.G. District.

……Petitioner.

And

The Deputy Registrar of Cooperative Societies,
Rajahmundry and others.

……..Respondents.

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.18403 of 2004

ORDER:

This writ petition is filed seeking Certiorari to call for records in connection with the order passed by the A.P Cooperative Tribunal, Visakhapatnam in O.A No.125 of 2004, dated 24-8-2004 and quash the same as arbitrary and illegal.

It appears the 3rd respondent borrowed an amount of Rs.3,75,000/- from the 2nd respondent Society for the purchase of a house on providing security of immovable property. However, she has not paid the installments regularly. Therefore, the 1st respondent passed an award against the 3rd respondent on 30-5-2003 fixing liability of an amount of

Rs.5,05, 478/-. Pursuant to the same, execution proceedings were taken out and auction of the property was conducted on 17-12-2003. The petitioner was the highest bidder and therefore, the sale was knocked down in his favour for Rs.3,60, 500/- and he had paid 15% i.e.,

an amount of Rs.54,075/- as per the directions of the respondents. Thereafter, the sale was confirmed by the respondents on 7-2-2004 and the sale deed got registered in favour of the petitioner on
13-2-2004 and the possession was delivered to him. However, aggrieved by the same, the 3rd respondent seems to have filed an appeal O.A.No.125 of 2004 before the A.P Cooperative Tribunal, Visakhapatnam. The Cooperative Tribunal after going through the confirmation proceedings and other material placed before it, came to the conclusion that the auction itself was not properly conducted by following due procedure. Therefore, the same is liable to be set aside. Accordingly, set aside and the appeal was allowed. Aggrieved by the same, the present writ petition is filed.

The learned counsel for the petitioner strenuously contended that the respondent No.3 having suffered the award and when the auction was knocked down in favour of the petitioner on
30-5-2003 and when the sale was conducted on
17-12-2003 filed objections on 6-2-2004 and all the objections were considered and rejected. Thereafter, the sale deed itself was executed on 13-2-2004 and the petitioner was put in possession of the property. Further the official respondents have followed the procedure in its strict sense. The 3rd respondent was given full

opportunity to defend herself properly. Even today the property is in possession of the petitioner and though no stay was granted by this Court, the 3rd respondent did not deposit the amount to the bank. Therefore, the impugned order passed by the Tribunal is liable to be set aside.

Learned counsel for the respondent submitted that the market value fixed for confirming the sale in favour of the petitioner was neither properly made nor the appropriate procedure as required under the law for confirmation of the sale was followed. Therefore, the Tribunal has rightly allowed the appeal. The petitioner has not made out any ground calling interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the submission made by the learned counsel on either side, perused the impugned order and other material available on record.

There is no necessity of going into all other details. It is suffice to notice that on the date of the sale, no bidders have come but the 2nd respondent himself brought three bidders who are his henchmen and sold the land at Rs.3, 60, 500/- which is very meager compared to the existing market value. The said schedule property situated at Laxmivarapupeta which is in the heart of city of Rajamundry and the average market value was not less

than Rs.8,000/- per Sq.Yard.

On filing appeal, the appellate authority passed an order in C.E.P.No.372 of 2003-2004, dated 6-2-2004, stating that the Court at the admission stage made the following order and again in the concluding portion of the order it was mentioned that the application, with the above observations, is disposed of at the admission stage. If any petition is filed the procedure to follow is to issue notice to the respondents giving an opportunity to file counter and then to record the evidence if required, then to dispose of the petition on merits. When the serious allegations as mentioned above are made against the respondents, the 1st respondent should have enquired into with the petitioner whether he complied with the mandatory provision as laid down under Rule 52 (10) of A.P.C.S. Rules, whether the Sale Officer had taken into consideration the objections raised by the appellant, whether the general bidders participated in the auction or not, whether the schedule property was sold at the existing market value or not, particularly whether the bidders in general participated or not, and whether the sale fetched the market value or not would have been proved only after recording the evidence. The 1st respondent failed to do all these things. He simply mentioned that the A.P Stamps and Registration Department fixed the rate at Rs.2,910/- per Sq.Yard, so

the bid value of Rs.3,60,500/- is proper.

The 1st respondent should have known that it is the existing market value that is to be ascertained and the bid has to fetch around that value but not the value fixed for the purpose of registration. The hasty decision of the respondent shows that he never responded to any request of the appellant and always he was bent upon to decide the matter in favour of 2nd respondent only.

Further, it may be noticed that the sale was held on 17-12-2003, which should have been confirmed after 60 days, but the 1st respondent confirmed the sale on 7-2-2004 itself i.e after 50 days only. Thereafter, the sale deed was registered on 13-2-2004. This is also a procedural flaw

In view of the above, I am of the opinion that no bidders practically participated in any auction and the value of the property was fixed on the basis of value fixed by the Registration Department for the purpose of stamp duty etc. There is a finding that the market value of this property would have been not less than Rs.8,000/- per Sq.Yard since it is situated in the heart of city of the Rajahmundry i.e., Laxmivrapupeta. I am of the opinion that the A.P. Cooperative Tribunal has not committed any error in coming to the conclusion that the auction of the property is arbitrary and illegal and is liable to be set

aside. No ground is made out for interference with the award passed by the Court under the Article 226 of the Constitution of India.

The writ petition is liable to be dismissed and accordingly dismissed. No costs.

(C.V. RAMULU, J)

Dated 7th December 2006
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